

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:

Verizon Petition for Emergency Declaratory and  
Other Relief

WC Docket No. 02-202

**REPLY COMMENTS OF THE MID-SIZE CARRIER GROUP**

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August 22, 2002

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ALLTEL Communications, Inc., CenturyTel, Inc., FairPoint Communications, Inc., Citizens Communications Company (on its own behalf and on behalf of the Frontier and Citizen ILECs under its ownership), Iowa Telecommunications Services, Inc., Madison River Telephone Company, LLC, Rock Hill Telephone Company d/b/a COMPORIUM Communications, Roseville Telephone Company, TDS Telecommunications Corporation, The Concord Telephone Company, Valor Telecommunications Enterprises, LLC, Virgin Islands Telephone Corporation d/b/a Innovative Telephone, and their respective affiliates and subsidiaries (collectively, the “Mid-Size Carrier Group” or “Group”)<sup>1</sup> hereby reply to comments in the above-captioned proceeding, in which Verizon has asked the Federal Communications Commission (“FCC” or “Commission”) to “provide ‘clear guidelines’ to the industry that will allow carriers to protect their ability to obtain payment for services they render to other

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<sup>1</sup> For purposes of these reply comments, “mid-size” carriers are those with 50,000 to 3 million access lines.

companies.”<sup>2</sup> The Mid-Size Carrier Group recognizes the importance of protecting the interests of end-users of distressed interexchange carriers’ (“IXCs”) and competitive local exchange carriers’ (“CLECs”) services. At the same time, however, members of the Mid-Size Carrier Group have legitimate concerns about the ability of certain distressed IXCs and CLECs to pay them for services rendered.

In order to balance these interests and assuage any IXC/CLEC concerns regarding anticompetitive use of advance payments, security deposits, and other protections, the Mid-Size Carrier Group supports the use of objective criteria, such as those discussed in the Group’s opening comments, to govern the invocation of such safeguards.<sup>3</sup> Similarly, to ensure cost-free and orderly migration of end users to new providers upon discontinuance of service by distressed IXCs and CLECs, the Mid-Size Carrier Group supports the establishment of a seamless transition customer protection plan (“STCPP”). None of the arguments raised in the opening round comments should dissuade the Commission from addressing these important issues.

#### **I. THE ISSUES RAISED IN THE VERIZON PETITION WARRANT PROMPT AND CAREFUL CONSIDERATION BY THE COMMISSION**

As the Group explained in its opening comments, the Verizon Petition raises important issues affecting both the customers and the suppliers of carriers in distress that warrant prompt Commission attention.<sup>4</sup> Other incumbent local exchange carriers (“ILECs”) and various other parties from outside the ILEC community, including the

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<sup>2</sup> See *Wireline Competition Bureau Seeks Comment on Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202 (July 31, 2002) (“Public Notice”), at 1; *Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202 (filed July 24, 2002) (“Verizon Petition”), at 2.

<sup>3</sup> See *Comments of Mid-Size Carrier Group*, WC Docket No. 02-202 (filed Aug. 15, 2002) (“Mid-Size Carrier Group Comments”), at 10-12.

<sup>4</sup> Mid-Size Carrier Group Comments at 3, 13-14.

New York State Department of Public Service ("NYDPS") and payphone service providers ("PSPs"), confirmed the importance of these issues.<sup>5</sup> In particular, the experiences of these parties make clear that the industry is in the midst of a crisis in which ILECs, PSPs, and other providers have already lost hundreds of millions of dollars due to the inability of distressed IXC and CLECs to pay for services they receive.<sup>6</sup> These commenters also showed that the failure of so many IXCs and CLECs to pay for services they receive threatens the ability of currently healthy providers to continue to provide service to such distressed carriers.<sup>7</sup> In cataloging these concerns, the commenters demonstrated that the relief sought by Verizon is fully warranted.<sup>8</sup>

In contrast, comments filed by parties challenging Commission consideration of the tariff revisions and other relief that Verizon seeks raise few substantive arguments. Rather, AT&T Corp. ("AT&T"), WorldCom, Inc. ("WorldCom"), and the CLEC industry claim that the Verizon Petition is rooted in an anticompetitive desire to disadvantage competitors rather than in a genuine need to invoke financial protections in a troubled telecommunications marketplace.<sup>9</sup> Yet, tellingly, in urging the Commission to deny any

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<sup>5</sup> See *Comments of New York State Department of Public Service*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("NYDPS Comments"), at 1-2 (supporting the initiation of proceedings to consider the issues raised by Verizon); *Comments of SBC Communications, Inc.*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("SBC Comments"); *BellSouth Comments On Verizon's Petition For Emergency Declaratory And Other Relief*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("BellSouth Comments"); *Comments of the Independent Alliance*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("Independent Alliance Comments"); *Comments of the National Telecommunications Cooperative Association*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("NTCA Comments").

<sup>6</sup> See *Comments of the American Public Communications Council*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("APCC Comments"), at 1-2; NTCA Comments at 2-3; SBC Comments at 2.

<sup>7</sup> See APCC Comments at 1-3; Independent Alliance Comments at 3; NTCA Comments at 3.

<sup>8</sup> See generally APCC Comments; BellSouth Comments; SBC Comments; see also *Comments of Time Warner Telecom*, WC Docket No. 02-202 (filed Aug. 15, 2002), at 13-15 ("TWT Comments"); *Comments of Sprint Corporation*, WC Docket No. 02-202 (filed Aug. 15, 2002), at 6-8 ("Sprint Comments").

<sup>9</sup> See *Opposition of AT&T Corp.*, WC Docket No. 02-202 (filed Aug. 15, 2002), at 6-7 ("AT&T Opposition"); *WorldCom Opposition*, WC Docket No. 02-202 (filed Aug. 15, 2002), at 2 ("WorldCom Opposition"); *Opposition of The Competitive Telecommunications Association*, WC Docket No. 02-202

relief to the ILEC industry, certain opponents of the Verizon Petition reserve the right to secure similar protections for themselves.<sup>10</sup>

In an effort to distract the Commission's attention from the crisis plaguing ILECs and other groups that provide telecommunications to distressed IXC's and CLECs, AT&T, WorldCom, and other opponents of the Verizon Petition wildly speculate about the potential for ILECs to use the protective measures contained in the proposed Verizon tariff revisions to harm rivals. Incredibly, some even go so far as to deny the existence of a "bad debt" crisis in the telecommunications sector.<sup>11</sup> In doing so, they ignore the record number of carrier bankruptcies as well as Chairman Powell's observation that "the telecommunications sector is riding on very stormy seas...[and] struggling under the weight of nearly \$1 trillion in debt."<sup>12</sup>

Other opponents suggest that ILECs should be required to reinstate rate of return regulation in exchange for receiving the protections available to virtually all other potential creditors.<sup>13</sup> Still others simply accuse Verizon and other ILECs of attempting to

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(filed Aug. 15, 2002), at 5-7 ("CompTel Opposition"); *Comments of Covad Communications Company*, WC Docket No. 02-202 (filed Aug. 15, 2002) ("Covad Comments"), at 5-7.

<sup>10</sup> See, e.g., AT&T Opposition at 13. AT&T asked the bankruptcy court for a three month deposit from WorldCom. See *In Re: WorldCom, Inc. et al.*, AT&T Corp. Objection to Debtor's Motion Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code for Authorization to Provide Adequate Assurance to Utility Companies, Chapter 11 Case No. 02-13533 (AJG) (Jointly Administered) (Bankr. S.D.N.Y. Aug. 6, 2002) at 8 ("AT&T Objection to WorldCom Section 366 Motion").

<sup>11</sup> AT&T Opposition at 6-7; *Opposition of the Counsel for National ALEC Association/Prepaid Communications Association*, WC Docket No. 02-202 (filed Aug. 15, 2002), at 7-8 ("NALEC/PCA Opposition") (claiming that the number of bankruptcies in which Verizon is involved is not "extraordinary").

<sup>12</sup> Testimony of Michael K. Powell, Chairman, Federal Communications Commission, Before the U.S. Senate Committee on Commerce, Science, and Transportation (July 30, 2002), at 6 -7 ("Powell Testimony"), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachment/DOC-224797A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachment/DOC-224797A1.pdf) (last visited Aug. 21, 2002).

<sup>13</sup> CompTel Opposition at 4-5.

transfer enhanced market risks to the CLECs and IXCs they serve.<sup>14</sup> The fact is, however, that it is the opponents of the Verizon Petition who improperly seek to make the ILECs guarantors of both continuity of service to distressed IXC and CLEC customers and the flawed business plans of many post-1996 market entrants. This Commission cannot permit the imposition of such an unwarranted burden on small and mid-size carriers and their subscribers.

Finally, a number of opponents urge the Commission to ignore the Verizon Petition altogether and not attempt to clarify the respective roles of the agency and the bankruptcy court in the context of telecommunications bankruptcies.<sup>15</sup> WorldCom itself confirms the need for such clarification, however, by arguing that even petitioning the FCC for relief may constitute a violation of the Bankruptcy Code's automatic stay provision.<sup>16</sup> The telecommunications industry cannot be left at risk of such exposure, particularly in light of the constitutional rights of private parties to petition the government.<sup>17</sup>

In sum, what all of these critiques of the Verizon Petition have in common is that they fail to address the merits of the issues raised by Verizon. Unlike the Mid-Size Carrier Group, which has proffered objective criteria to govern invocation of tariff protections and implementation of an STCPP, opponents of the Verizon Petition offer no constructive suggestions regarding the critical issues presented. In particular, they studiously ignore what should be a central concern of the Commission, how to prevent

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<sup>14</sup> Covad Comments at 5-6; NALEC/PCA Opposition at 9.

<sup>15</sup> See, e.g., AT&T Opposition at 21-25.

<sup>16</sup> WorldCom Comments at 10-11.

<sup>17</sup> See *Eastern R.R. Presidents Conference et al. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961) (explaining that "[t]he right of petition is one of the freedoms protected by the Bill of Rights").

the financial woes of certain carriers from engulfing the industry's few remaining healthy players, to the detriment of *all* subscribers. Instead, they accuse the ILEC community—indiscriminately—of harboring any number of pernicious motivations and suggest that maintaining the *status quo* is the most effective way to ensure continuity of service during these troubled times. Yet, to accept these arguments is to reject what should be a wholly unexceptionable premise—that parties in a market economy should be required to pay for services they consume. In his Senate testimony, Chairman Powell acknowledged the importance of this concept, explaining that the Commission was urging the WorldCom bankruptcy court to pay “due consideration [to] the impact [of the WorldCom bankruptcy] on other telecommunications service providers that generally must continue serving the bankrupt carrier.”<sup>18</sup>

Accordingly, the Commission must reject the IXC and CLEC communities' invitations to ignore both the realities of the current economic crisis and the critical issues raised in the Verizon Petition. As explained below, failing to address these issues now could irreparably harm the telecommunications industry and end users of telecommunications services by seriously undermining the ability of small and mid-size ILECs to provide essential communications services in rural and insular areas.

## **II. MID-SIZE ILEC EXPOSURE TO DISTRESSED CARRIER DEFAULTS AS A PERCENTAGE OF REVENUES IS MATERIAL**

Not only is the “bad debt” crisis the industry faces real, its effects are particularly troublesome for small and mid-sized ILECs, such as the members of the Mid-Size Carrier Group, which are less able to weather financial setbacks than larger ILECs. Opponents of the Verizon Petition attempt to minimize ILEC exposure to IXC and CLEC bad debt

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<sup>18</sup> Powell Testimony at 5.

by focusing on only the largest carriers and relying on outdated ARMIS data from 2000 and 2001.<sup>19</sup> Such selective statistics dramatically understate the current level of ILEC exposure because they do not account for any of the 31 telecommunications firms that have gone into bankruptcy in 2002,<sup>20</sup> including Adelphia (\$24.4 billion, sixth largest in U.S. history), Global Crossing (\$25.5 billion, fifth largest in U.S. history), and WorldCom (\$103.9 billion, by far the largest in U.S. history).<sup>21</sup>

Moreover, the inability of IXC and CLEC to pay ILECs for services they provide harms the mid-size ILECs that comprise the Group even more acutely than larger ILECs. The Mid-Size Carrier Group serves relatively small customer bases scattered across rural and insular areas, which increases their costs and limits their abilities to achieve economies of scale. As the Independent Alliance explained in its comments, because of their delicate financial balance even under the best of circumstances, smaller carriers that do not receive payment for services they provide “have little choice except to make up the shortfall via rate increases for other customers or, alternatively, to take measures that result in a diminution of service.”<sup>22</sup>

Given the relative size of the Mid-Size Carrier Group’s bad debt exposure, forcing them to absorb significant losses or to continue to provide service without compensation would have similar consequences. For example, WorldCom’s pre-petition debt to carriers in the Mid-Size Carrier Group exceeds \$90 million dollars,<sup>23</sup> and Group

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<sup>19</sup> See, e.g., AT&T Opposition at 7, n. 6.

<sup>20</sup> New Generation Research, Inc., “The Largest Bankruptcies, 1980-Present,” available at [http://www.bankruptcydata.com/Research/15\\_Largest.htm](http://www.bankruptcydata.com/Research/15_Largest.htm) (last visited Aug. 20, 2002).

<sup>21</sup> *Id.*

<sup>22</sup> Independent Alliance Comments at 3.

<sup>23</sup> *In re: WorldCom, Inc. et al.*, Opposition of Mid-Size Carrier Group to Motion Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code for Authorization to Provide Adequate Assurance to Utility



members have not yet received payment for services provided to WorldCom in the weeks since WorldCom's bankruptcy filing. Because of the relative small size of carriers in the Mid-Size Carrier Group, their exposure to WorldCom's potential bad debt alone is staggering—13 to 29 percent as a percentage of access revenue, and 4 percent to 9 percent as a percentage of total ILEC revenue. These amounts are undeniably material to the financial health of the members of the Group and their ability to serve subscribers in their service areas, including both IXC's and CLEC's as well as customers of WorldCom and other distressed carriers. This substantial exposure demonstrates that prompt Commission intervention as proposed by Verizon and the Group is fully justified.

### **III. IMPLEMENTATION OF AN STCPP APPROPRIATELY PROTECTS THE INTERESTS OF CARRIERS AND END-USERS ALIKE**

IXCs and CLEC's should embrace an STCPP, such as the one outlined in the Group's opening comments, because it ensures continuity of service to end-users and can only be implemented when an IXC's or CLEC's financial distress meets certain objective criteria. As explained in the Group's opening comments, an STCPP can ensure continuity of service and, if necessary, cost-free and orderly migration of end users to new providers upon discontinuance of service by distressed IXC's or CLEC's. Not only can an STCPP prevent further financial ruin in the telecommunications industry by permitting ILEC's to receive payment for services provided, an STCPP also helps distressed IXC's and CLEC's retain customers because it guarantees that service to end users will continue in the event of a default by the distressed IXC or CLEC.

The Group's proposed STCPP balances the interests of carriers and end users and should, thereby, assuage any concerns the IXC and CLEC communities might have about anticompetitive ILEC conduct. Notably, the ILECs would have no control over when the STCPP was triggered because the plan would go into effect only upon satisfaction of clearly defined objective criteria, such as following default, notice, and lapse of a cure period in a non-bankruptcy setting or following nonpayment for post-petition services in the bankruptcy context. The Group's STCPP would also give end users reasonable notice of migration and a fair and equitable opportunity to transition to a new service provider of their choice. Finally, and perhaps most importantly, transition from a distressed carrier to an alternative provider pursuant to the STCPP would be virtually transparent, automatic, seamless, and cost-free to end users.

Group members stand ready to work with the Commission, state regulators, and other carriers to resolve some of the technical challenges posed by mass migrations (particularly those involving end users of CLEC and special access services) in order to implement STCPPs appropriate to those services. As the New York State Department of Public Service explained in its comments, "delineation of responsibility is necessary to avoid confusion and service disruption" when end users are migrated from one carrier to another.<sup>24</sup>

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<sup>24</sup> NYDPS Comments at 3.

#### IV. CONCLUSION

The Group looks forward to working with the Commission, state regulators, and other carriers to devise and implement STCPPs that ensure against nonpayment and provide for the orderly migration of end users to different service providers in the event that ILECs must terminate service to a defaulting IXC or CLEC. In light of the distress that this year's major telecommunications bankruptcies have inflicted on the ILEC community generally, and on small and mid-size ILECs most acutely, the Commission should move quickly so as to minimize the risks of: (1) service discontinuance to end users; (2) the spread of economic problems to additional carriers; and (3) harm to the ability of small and mid-size ILECs to provide critical communications services in rural and insular areas.

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August 22, 2002

## CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at the law firm of Wiley Rein & Fielding LLP, counsel for the Mid-Size Carrier Group in the above proceeding, hereby certify that on Thursday August 22, 2002, I served the foregoing **Reply Comments of the Mid-Size Carrier Group**, either by hand-delivery (\*), electronic mail (\*\*), or by first class mail, postage pre-paid, on the following:

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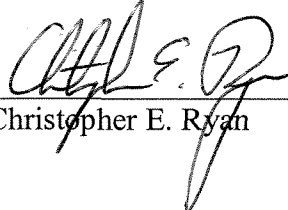
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